

Ramon Rossi Lopez - rlopez@lopezmchugh.com
(California Bar Number 86361; admitted *pro hac vice*)
Lopez McHugh LLP
100 Bayview Circle, Suite 5600
Newport Beach, California 92660
949-812-5771

Mark S. O'Connor (011029) – mark.oconnor@gknet.com
Gallagher & Kennedy, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016-9225
602-530-8000

Co-Lead/Liaison Counsel for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

In Re Bard IVC Filters Products
Liability Litigation

No. MD-15-02641-PHX-DGC

**MOTION TO SEAL
And
NOTICE OF LODGING DOCUMENTS
RELATED TO PLAINTIFFS'
RESPONSES TO DEFENDANTS'
MOTIONS FOR SUMMARY
JUDGMENT**

Motion to Seal

In accordance with Section 25 of the Stipulated Protective Order [Doc. 269], Federal Rule of Civil Procedure 26(c)(1)(G), and Local Civil Rule 5.6, Plaintiffs move this Court for an Order sealing Plaintiffs' unredacted Responses to Defendants' Motions for Summary Judgment in the bellwether cases ("Responses"), their controverting statements of facts ("CSOFs"), and their Omnibus Statement of Facts ("OSOF") in support thereof. Plaintiffs' Responses, CSOFs, and OSOF contain personal healthcare information regarding the bellwether plaintiffs that is protected under HIPAA and confidential under the Stipulated Protective Order, warranting protection from public disclosure.

Plaintiffs' personal healthcare information is protected under the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 45 C.F.R. §

1 160, 164(A) & (E), as well as several state-law privileges. The knowing disclosure of
2 such information is prohibited by 42 U.S.C. § 1320d-6. This Court has already granted
3 the filing under seal of the same (or similar) information when the parties submitted their
4 respective bellwether submissions. [See Doc. 4366.]

5 Each of the following documents contains such information (Plaintiffs have
6 separately filed redacted versions of these documents except as noted below):

7 Plaintiffs' Response in Opposition to Defendants' Motion for Summary Judgment
8 as to Plaintiffs Lisa and Mark Hyde's Claims;

9 Plaintiffs' Controverting Statement of Facts in Opposition to Bard's Motion for
10 Partial Summary Judgment as to Plaintiffs Lisa and Mark Hyde's Claims;

11 Jones Plaintiffs' Response to Defendants' Motion for Partial Summary Judgment
12 on Plaintiffs Doris and Alfred Jones's Claims;

13 Plaintiffs' Controverting Statement of Facts to Defendants' Separate Statement of
14 Facts in Support of Motion for Summary Judgment as to Plaintiffs Doris And Alfred
15 Jones's Claims;

16 Plaintiff Carol Kruse's Memorandum in Opposition to Defendants' Motion and
17 Memorandum in Support of Motion for Summary Judgment as to Plaintiff Carol Kruse's
18 Claims;

19 Plaintiff Carol Kruse's Controverting Statement of Facts in Support of Her
20 Memorandum in Opposition to Defendants' Motion and Memorandum in Support of
21 Motion for Summary Judgment as to Plaintiff Carol Kruse's Claims;

22 Plaintiff Debra Mulkey's Opposition to Defendants' Motion for Summary
23 Judgment and Memorandum in Support;

24 Plaintiff's Controverting Statement of Facts in Opposition to Bard's Motion for
25 Summary Judgment as to Plaintiff Debra Mulkey's Claims; and
26
27
28

1 Plaintiffs' Omnibus Separate Statement of Facts in Support of Their Response to
2 Defendants' Motion for Summary Judgment in the Bellwether Cases.¹

3 Many of the exhibits in support of the above documents also contain plaintiffs'
4 private healthcare information. Plaintiffs and Defendants shall meet and confer regarding
5 the various exhibits to attempt to resolve confidentiality disputes.

6 Accordingly, Plaintiff requests that the Court order the information and documents
7 lodged with Plaintiffs' Responses, CSOFs, and OSOF be sealed pending final
8 determination of confidentiality.

9 **Notice of Lodging**

10 Pursuant to LRCiv 5.6(d), Plaintiffs submit this Notice of Lodging Certain
11 Documents under Seal re Their Oppositions to Defendants' Motions for Summary
12 Judgment.

13 Plaintiffs provide notice that, pursuant to LRCiv 5.6(d), they have lodged with the
14 Court under seal (with combined Motion to Seal and Notice of Lodging) their OSOF,
15 which contains factual statements based on the contents of many of the documents that
16 Defendants have claimed to be confidential and that are lodged with this Notice.
17 Resolution of those confidentiality issues will determine which parts of the OSOF are
18 appropriate for sealing and which statements may be filed without redaction.

19 Defendants contend that many of the documents are confidential and should be
20 filed under seal. As required under LRCiv 5.6(d), Plaintiffs certify that on October 2,
21 2017, the parties met and conferred in good faith and were unable to agree about whether
22 the documents are confidential under the Protective Order and should be filed under seal.
23

24
25 ¹ Plaintiffs note that they seek to have sealed the portions of the OSOF that contain
26 plaintiffs' personal healthcare information. Such information is primarily set forth in the
27 facts beginning at paragraphs 150 of the document. The prior paragraphs contains facts
28 from documents, many of which Bard has designated as confidential. Because the
resolution of those confidentiality claims will determine what redactions will be made to
the OSOF, Plaintiffs have not filed a redacted OSOF and will file a properly redacted
version of the document once the confidentiality issues are resolved.

1 Plaintiffs do not believe that the disputed documents warrant continued confidential
2 treatment as proprietary or sensitive trade secret information.

3 This dispute notwithstanding, the parties have agreed to continue to meet and
4 confer on the documents at issue.

5 RESPECTFULLY SUBMITTED this 2nd day of October 2017.

6 GALLAGHER & KENNEDY, P.A.

7 By: /s/ Mark S. O'Connor

8 Mark S. O'Connor

9 Paul L. Stoller

10 2575 East Camelback Road

Phoenix, Arizona 85016-9225

11 LOPEZ McHUGH LLP

Ramon Rossi Lopez (CA Bar No. 86361)

12 (admitted *pro hac vice*)

100 Bayview Circle, Suite 5600

13 Newport Beach, California 92660

14 *Co-Lead/Liaison Counsel for Plaintiffs*

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that on this 2nd day of October, 2017, I electronically transmitted
17 the attached document to the Clerk's Office using the CM/ECF System for filing and
18 transmittal of a Notice of Electronic Filing.

19 /s/ Gay Mennuti

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